IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8229 of 2004
with
CIVIL APPLICATION No 6623 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK LEYLAND FINANCE LTD

Versus

SALES TAX OFFICER-I CLASS-I, DIVISION 21

Appearance:
1. Special Civil Application No. 8229 of 2004
MR MANISH K KAJI for Petitioner No. 1
MR KH KAJI for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 25/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service

of Rule for the respondent.

In the facts and circumstances, the matter is taken up for final disposal today.

2. The main controversy involved in this petition is about the nature of the transactions between the petitioner and its customers - whether the petitioner had become owner of the vehicle/equipments and given them on hire to its customers or whether the customers had purchased the vehicle/equipments from the manufacturers and the petitioner was a mere financier. The petitioner claimed to be a mere financier, but in the regular assessment the sales-tax department has taken the view that the petitioner was the owner of the vehicle/equipments. Various contentions are raised in the petition for challenging the assessment order.

3. Mr Siraj Gori, learned AGP for the respondent authority has submitted that since the regular assessment is made, the petitioner has an alternative remedy of filing a statutory appeal under Section 65 of the Gujarat Sales-tax Act, 1969.

4. In the facts and circumstances of the case, since the necessary and relevant documents such as hire purchase agreements and RTO Registration books were not on the record before the Assessing Officer and since there is some controversy whether the Assessing Officer had at all called for such documents, it appears to us that the interests of justice would be served if the impugned assessment order is set aside and the matter is remanded to the Assessing Officer for passing a fresh assessment order in accordance with law after permitting the petitioner to produce such material and documents as the petitioner wishes to produce before the Assessing Officer.

Since the attachment orders were passed on the basis of the aforesaid assessment order which has been set aside, the attachment orders/notices also stand quashed.

5. It is clarified that we have not gone into the merits of the controversy between the parties. It will be open to the petitioner to raise all available contentions at the hearing before the Assessing Officer.

It goes without saying that the petitioner shall extend co-operation for expeditious completion of the assessment.

6. In the facts and circumstances of the case, while setting aside the assessment order dated 30.6.2004 for the year 1999-2000 and the consequential attachment orders, we direct the petitioner to pay the respondent costs of these proceedings which are quantified at Rs.10,000/= (Rupees ten thousand), within two weeks from today.

5. The petition accordingly stands disposed of in terms of the aforesaid directions.

Rule is made absolute.

6. Since the petition is disposed of, the Civil Application does not survive and is accordingly disposed of.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-